Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	
Development of Competition and	)	
Diversity in Video Programming	)	
Distribution and Carriage	)	
	)	
	)	

<u>Reply Comments of Engle Broadcasting</u>

Engle Broadcasting, licensee and operator of WPSJ-LP, a Class A station in Winslow Twp., New Jersey respectfully submits these reply comments.

We support the comments of the Community Broadcasters Association, the Bruno Goodwin Network and the Media Access Project.

<u>RETAIN LEASED ACCESS</u>

In its reply comments, cable operators and Verizon request the Commission remove leased access regulation for competitive providers.[1] Engle urges the Commission to strengthen the leased access regulations, not remove them. As previously stated by this commenter, the CBA and many others, leased access is the only way many Class A stations, including WPSJ-LP, can present its community-oriented programming to cable subscribers.[2]

Verizon has admitted that it is a competitor to local television, such as Class A stations.[3] In its comments Verizon described its recently launched FiOS1 channel that "offers local weather, traffic, news, sports and community features."[4] Verizon has not publicly stated it will carry Class A stations in markets where must carry for LPTV is not required. Under current law,

[1] See TimeWarner Comments at 25-26, Verizon Reply Comments at page 7
[2] WPSJ-LP has been on the air since 1986.
[3] See Verizon Reply Comments at page 4
[4] See Verizon Reply Comments at page 4

absent leased access, subscribers of Verizon's FiOS will be unable to view programming originated by Class A stations.

TOKEN LEASED ACCESS RATES FOR CLASS A STATIONS

It is consistent for the Commission to determine that Class A stations receive a discount.
In the Cable Competition Act of 1992, the Commission is charged with "encouraging cable operators to carry low power stations that do not qualify for must carry."[5]
To date, the Commission has not fulfilled this mandate. A token discounted leased access rate is a feasible method for the Commission to comply with this directive.

EXPEDITED COMPLAINT PROCESS

Cable operators and Verizon also requested the Commission not adopt expedited complaint process citing the small number of complaints.[6] Our own experience with the complaint process has shown it to be cumbersome. Many petitioners have experienced strict deadlines applied to the leased access programmer and flexible deadlines for the cable operator.[7] Leased access programmers have 60 days to file a complaint; however the decision from the Commission may take up to or over a year. Programmers cannot develop a program then wait ten months to a year waiting for dispute resolution. We urge the Commission to adopt an expedited complaint process including arbitration or telephone resolution.

In the first few years following the adoption the Reconsideration for Leased Access in 1996, there were many complaints filed by prospective leased access programmers.[8] These complaints were generally for cable operator's failure to provide rates, technical support and failure to run programming as contracted. Most were dismissed by the Commission. In recent years there have been few complaints, reflecting the deceased usage of leased access channels. It is generally acknowledged that prospective leased access

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[5] See Cable Television Consumer Protection and Competition Act of 1992 (21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.
[6] See Verizon Reply Comments at page 9,

[7] See Media Access Project Comments at 3
[8] A search of The FCC's EDOCS show 69 petitions under leased access. This is considerably more than the 20 mentioned by a cable operator in its comments

programmers have been thwarted by cable operators' successful undermining of leased access.

Current leased access programmers are the few hardy souls who have learned to navigate the obstacle course set up by cable operators.

It must be noted by the Commission that in general, leased access programmers are small businesses attempting to do business with giant corporations. Cable is the dominant player in the media industry, making or breaking programmers. The time to be concerned about the cable operators' "operation, financial condition or market development" is past. The cable commenters have not provided any evidence of a cable operator declaring bankruptcy due to revenue opportunities lost to leased access.

INSURANCE

In its Reply Comments, the NCTA claims that liability insurance requirements are appropriate.[9] The Commission has ruled that a cable operator's requirement for general liability insurance "amounts to reinsurance" of coverage normally carried and is unreasonable.[10]

Cable commentators have not provided any evidence that non-affiliated programmers are required to provide general liability, workmen's compensation and/or media perils insurance naming the operator as additional insured.

Cable operator commentators have also failed to cite any instance of a claim against an operator for content of leased access programming or for general liability. This clearly indicates the requirement of leased access programmers to provide such insurance for cable operators is unnecessary.

In addition, it is inconsistent for cable operators to require general liability insurance of $1,000,000.00 or more from a leased access programmer who merely drops off or mails a videotape. Cable operators do not require liability insurance by customers who routinely install or disconnect and return cable converter boxes; an action which requires considerably more handling of cable operator property and equipment, by persons of unknown technical experience.

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[9] See NCTA Reply Comments at 17

[10] See CSR 5557-L United Multimedia Productions & Hampton Video vs. CSC Acquisitons-New York, Inc. at pp 10

It is also inappropriate for cable operators to require leased access programmers obtain workman's compensation insurance. It is the responsibility of the leased access programmers' state, not the cable operator, to enforce workman's compensation insurance requirements.

Media perils insurance is also unnecessary because cable operators are immune from damages which result from leased access programming. [11]

Placing the burden of proof on the leased access programmer to show that such insurance requirements are unreasonable allows cable operators to stall and delay the presentation of leased access programming. The Commission should restrict cable operators from requiring insurance coverage of leased access programmers.

SUMMARY

To conclude, we urge the Commission to retain the leased access service, adopt a minimal token rate for Class A stations, streamline the complaint process, forbid cable operators from requiring insurance of lease access programmers and strengthen programmers' recourse when lease access programming does not run.

We respectfully submit these comments.

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[11] See 47 U.S.C. Sec. 558